

REMARKS

Claims 2-15, 20-34, 39-53, 58-72 and 96-99 are pending in this application.

Claims 2-15, 20-34, 39-53, 58-72 and 96-99 are rejected under 35 U.S.C. § 103(a).

Rejection Under 35 U.S.C. § 103(a) of Claims 2-15, 20-34, 39-53, 58-72, 96-99

The Examiner rejects **claims 2-15, 20-34, 39-53, 58-72, 96-99** under 35 U.S.C. § 103(a) as unpatentable over Huang et al. (U.S. 6,151,582) in view of Landvater (U.S. 6,609,101).

Claim 96

Preliminarily, it is worth characterizing Huang. Huang discloses an agile supply management chain adapted to manufacturing, not retailing. Because demand for manufactured goods drives vendor managed replenishment (VMR) of distribution centers, Huang mentions stores in cols. 71-74. These columns do a much better job of explaining how Huang avoids using store-specific data than the Examiner-cited passages. In cols. 71-74, Huang teaches away from using store-specific data three times and never suggests using store-specific data. In particular, Huang says, "Note that we do not require the data ... which represents standard deviation of demands at individual stores." Col. 72, lines 26-28. In addition, "The stock-out probability is defined as the probability of shortage in at least one of the stores [not any particular store] replenished by the DC." Col. 73, lines 44-46. Similarly, "Lead-times from each Plant to each DC and (an average) from each DC to its Stores" is an input to the vendor managed replenishment contract setup. Col. 74, lines 33-34. Teaching away from using store-specific data is not surprising for this manufacturing supply chain application, as the manufacturer will have limited access to and little interest in the store level operations of retailers.

The Examiner's form of argument is first to assert that every limitation of the claim is met by Huang (OA at 3), then to contradict herself by admitting at least some of what Huang lacks. (OA at 4) Reading the Examiner's remarks at pages 13-14, one might miss how the brief admission of what is lacking in Huang completely undermines the detailed assertion that virtually everything appears in Huang. The reproduction

below uses double strike through to indicate what the Examiner acknowledges is missing from Huang and single strike through to indicate what else is missing.

~~A computer-implemented method of generating reports from simulated unit inventory and unit sales on a bottom-up per location basis for a multitude of items at a plurality of locations, including:~~

~~modeling with a causal event calendar, which is a data structure stored in computer readable memory, a plurality of retail event types that have differing impacts on demand, wherein an event data tuple for an event in the causal event calendar includes at least a good identifier, a selling location identifier, a start date, a stop date and an event type identifier;~~

~~forecasting unit inventory and unit sales at a per-item, per-selling location level using the event type identifier to identify one or more likely demand impacts and, in combination with other data in the event data tuple, to modify demand projections during the event; and~~

~~generating, from results of the forecasting using the causal event calendar consistently across analytical tools, analytical reports that support retailing activities.~~

The limitations not found in Huang et al. cannot be supplied by Landvater.

Most of the limitations that we have crossed out are acknowledged (OA p. 4) as missing from Huang. OA at 4 ("Huang et al. does not expressly disclose that a selling location identifier is stored in association with a retail event type.") The teaching away from store-level data, which is quoted above, should also be acknowledged. It follows that Huang does not teach forecasting *unit inventory and unit sales at a per-item, per-selling location level*. The lack of simulation of selling location activity should further be acknowledged. Again, Huang teaches away from selling location simulation in favor of a computationally less demanding approach that supports manufacturing and delivery to distribution centers, not *retailing activities*.

Changing Huang from the forecasting approach that it discloses into a store-level simulation engine would ignore Huang's teaching away from use of store-level data and further change Huang's principle of operation, both of which defeat a section 103 rejection. Combining the references would improperly modify the primary reference Huang's principle of operation. MPEP § 2143.01 explains:

THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE

If the proposed modification or combination of the prior art would change the

principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the “suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.” 270 F.2d at 813, 123 USPQ at 352.).

Accord, *Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1569, 38 U.S.P.Q.2D (BNA) 1281 (Fed. Cir. 1996) (equivalence to redesign reversed, as principles of operation obviously not the same); *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 U.S.P.Q.2D (BNA) 1434 (Fed. Cir. 1988) *cert. denied* 488 U.S. 825 (1988) (invalidity reversed, as principles of operation antithetical) *appeal after retrial* 939 F.2d 1540, 19 U.S.P.Q.2d (BNA) 1432 (Fed. Cir. 1991) (judgment of infringement *aff’d*). This rule finds support in cases judging protection afforded by the doctrine of equivalence that ask whether the accused device appropriates the principle and mode of operation of the patented machine. *See, e.g., Winans v. Denmead*, 56 U.S. (15 How.) 330, 342, 14 L. Ed. 717 (1854). When the principle of operation completely changes, there is neither infringement nor a basis for rejection.

Huang’s principle of operation is to streamline the prediction of manufacturing demand, using data no more granular than customer-product tuples. *Compare* col. 109 (describing tuples) *with* cols. 71-74 (notes that system does not require demand data or statistics from individual stores). Because Huang has no interest in planning at the store or department-within-store level and no access to such granular data, the promotion calendar is directed to customer promotions at a customer aggregate level. In Huang, the promotion “type” is chosen from the group “R for Retailer, P for PCEC [manufacture]; C for Competitor”. Col. 127. The “Promotion Class” described in col. 54 refers to price promotions, feature advertisements and in-store displays, on a customer aggregate basis, not a store-by-store basis. The system is driven by forecasts from a variety of sources (col. 18, Demand Management Frame), none of which involve

simulation of sales at stores. The manufacturer assumes no control over or responsibility for distribution of goods after delivery to the customer's distribution center. Accordingly, Huang looks elsewhere than store level simulation for data sources appropriate to agile manufacturing.

Switching from forecasts to simulation of selling location activity would change Huang's principle of operation. Switching from receiving bulk customer forecast data to simulating daily sales at individual customer stores would further change Huang's principle of operation and deeply involve Huang's manufacturer in the customer's business. Again, the MPEP and cited case law prohibit so much modification of a primary reference as a basis for a § 103 rejection. Without even considering whether Huang and Landvater might be combined, the law is that Huang is too far afield, and has too different a principle of operation from what we claim for Huang to be modified into a basis for an obviousness rejection. Therefore, the rejection should be withdrawn.

Alternatively, there is no evidence of record that one of skill in the art would attempt to combine a manufacturer's agile manufacturing system with a retailer's retail planning system. Such a combination is counter-intuitive, because it crosses boundaries of data ownership and floods the manufacturer with detail that is unneeded and too expensive for the manufacturer to maintain. The manufacturer's agile manufacturing system uses information selectively provided by customers. The manufacturer does not own or have access to the customer's raw data and internal systems, where the detailed information on which simulations are built resides. A person of ordinary skill starting with Huang would be starting with a manufacturer's system. Some technical features of Landvater might be of interest, but not features that would require access to data that Huang disavows.

The details of Landvater to which the Examiner points would not be adopted or even considered by one of ordinary skill in the art, starting with Huang. Again from the manufacturer's perspective, which Huang adopts and teaches, the cost of acquiring and maintaining data regarding individual customer sales locations can be avoided without jeopardizing the accuracy of forecasts. There is no justification that the Examiner offers for taking on the data collection and maintenance costs that Huang teaches avoiding, even if that were a manufacturer's option, which it is not. Moreover, that level of detail would probably never be worth reporting to the users of the manufacturer's system –

they just do not care about distribution of inventory among the customer's outlets. Avoiding stock-outs at individual customer locations is the customer's job, not the manufacturer's concern.

In the end, the Examiner's purported motivation to combine dissimilar systems is out of touch with and ignores the realities of business, and the realities of how one of ordinary skill in the art would be expected to behave. Therefore, the rejection should be withdrawn.

Even if the systems were combined, the result would not read on these claims. The features of Landvater that Huang might select would be controlled by Huang's motivations and expressed desire to avoid processing of store-level data. From Huang's perspective, bottom-up means from customers to manufacturers, not from individual stores to manufacturers. Huang would not select simulation features. Huang would not devise a presentation calendar at an item-store level. Huang would not support a presentation demand type selector. The features that Huang might select would have more to do with delivery cycles and lead times or with analytical tools that might be adapted from retailing to manufacturing. The exact details of combining Huang and Landvater, using Huang as the primary reference, are not explained by the Examiner, so it is difficult for us to analyze the proposed combination in more detail. Still, it is easy to see that the proposed combination would not read on these claims.

Therefore, claim 96 should be allowable over Huang in view of Landvater.

Claim 97

Claim 97 includes the limitations shown below, some of which the Examiner acknowledges are not found in Huang. OA at 5. We follow the strike through convention introduced above:

further including as event types with corresponding event type identifiers, events involving decisions by a retailer ~~and exogenous factors~~, wherein

the decisions by the retailer include price promotions, advertising promotions, ~~promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction; and~~

~~the exogenous factors include approaching holiday events, seasonal events, and special events in a city that increase customer traffic at a selling location.~~

These limitations are not found in Huang in view of Landvater.

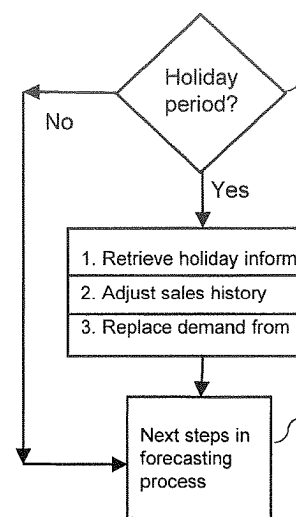
Most of the limitations that we have crossed out are acknowledged as missing from Huang. OA at 5 (“Huang et al. does not expressly disclose that the promotional and seasonal events include holiday events.”) More generally, Huang does not include *exogenous factors* in either the promotion class or promotion type attributes on which the Examiner ultimately must rely. It should also be acknowledged that Huang does not provide an enabling disclosure of a data structure coded with event types corresponding to *promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction*. Among the passages cited by the Examiner, col. 13 lines 31-32 includes the passing comment, “Generate forecasts for new products and managing product transitions.” Similarly, col. 22, line 3-4 says, “Support forecasting of model change over, and introduction of new products.” These passages identify a need felt by Huang, perhaps a long felt need, but not a solution and not anything that reads on the claim wording.

Note that the event types in claim 97 are applied at the store level, by antecedent reference, which is contrary to what Huang teaches for price and advertising promotions, the only event types claimed that Huang mentions.

The Examiner does not look to Landvater to supply the missing elements of *promotions of substitute or complementary products, removal of substitute or complementary products from a selling assortment, and new product introduction and special events in a city that increase customer traffic at a selling location*. As Huang does not supply these elements and Landvater is not relied upon, claim 97 should be allowable over the art of record, even before we discuss Landvater.

The Examiner relies on Landvater to supply exogenous factors to the causal calendar event types, citing FIGS. 10-11, col. 11, lines 59-67 and col. 12, lines 57-67. OA at 5. As the Examiner makes no effort to read these passages on the limitation *special events in a city that increase customer traffic at a selling location*, the exogenous factors event type is admittedly not taught by either reference and claim 97 is allowable over the combination.

None of the figures or passages cited teach including exogenous factors event types to a causal event calendar data structure. Landvater's approach to holidays and seasons is not mediated by a causal calendar data structure. For instance, take FIG. 10 (reproduced in the margin), and the accompanying text at cols. 11-12. Landvater explains that "holiday information is retrieved from database 36 (FIG. 2) and loaded into holiday arrays. ... [S]ales history from prior years are shifted into the week in which the holiday falls this year." Col. 11, lines 62-66. The mention of holidays and shifting of historical data from one week to another does not read on using a causal calendar to take into account holidays. Even if combination of Huang and Landvater were permissible, which it is not, the combination would not teach the claimed use of causal calendar event types.



Therefore, claim 97 should be allowable over Huang in view of Landvater.

Claims 98-99

Claims 98-99, which depend, respectively, from claims 96-97, include the limitations:

wherein generating analytical reports consistently using the causal calendar data structure further includes reports to support:

ordering items from suppliers,

allocating item inventory for seasonal or fashion items received from suppliers among selling locations,

distributing items from a distribution center to selling locations,

bottom-up planning of sales, on-hand inventory and receipt of items into inventory,

top down planning that aggregates items at levels higher than individual items,

open to buy management reports that compare future inventory levels aggregated to a department level or higher with budgeted levels of inventory investment, and

markdown management that recommends timing and level of markdowns of seasonal or fashion items in order to sell out available inventory by a

predetermined out date.

These limitations are not found in Huang in view of Landvater. We note that the Examiner relies exclusively on Huang for the limitations in these dependent claims. Reference to Landvater relates to the claims from which these depend.

One of ordinary skill in the art, beginning with Huang, would not attempt to generate any of these reports, except, perhaps, ordering of items from the particular manufacturer and top-down planning. Even the potential exceptions, from the manufacturer's Huang perspective, would not match the call of the claims, which have an antecedent basis in store level analysis. One of ordinary skill would not expect, from the perspective of a single manufacturer, to generate reports to support *ordering items from suppliers*, as multiple suppliers are competitors who do not see each others' orders. Top-down planning in Huang does not extend into selling locations and one of ordinary skill in the art would not venture to extend the manufacturer's system to that level. In contrast, Huang emphasizes "market wide trends" across retailers, in col. 21, lines 36-37. Huang's limited interest in orders and top-down planning does not read on these claims, which, therefore, should be allowable.

The Examiner badly misreads Huang (OA at 6-7) when she asserts that reports based on store-level data for allocating, distributing, bottom-up planning from sales locations, open to buy management and markdown management are taught and enabled.

Allocation of item inventory among selling locations happens in retailing, but Huang does not teach or enable generating allocation reports for use by retailers. Post allocation to selling locations is not part of Huang's teaching. As discussed above, Huang has no interest in planning at the store or department-within-store level and no access to such granular data. The manufacturer assumes no control over or responsibility for distribution of goods after delivery to the customer's distribution center. Accordingly, Huang does not look to store-level simulation for data sources appropriate to agile manufacturing. All of the

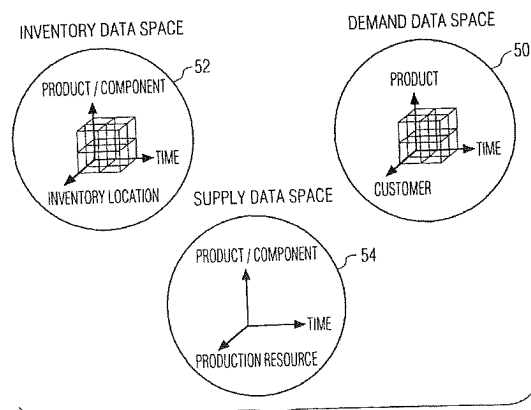


FIG. 4

passages cited refer to supply into distribution centers (DCs) rather than out of DCs to selling locations. Reference to FIG. 4 (reproduced above) is typically unhelpful to the Examiner's position. As the Examiner relies only on Huang for allocation reports and Huang admittedly does nothing at the selling location level, these claims should be allowable over the art of record.

Distributing item inventory from DCs to selling locations also happens, but analytical support for distribution is not taught by Huang. We acknowledge that the word "store" appears in cols. 33 & 36, but not in a context that teaches distribution reports. It appears that a patent attorney modified Huang's disclosure to throw the word "store" in these columns, as an alternative to distribution centers (think Costco or other large package stores,) but did not discuss distribution from DC locations to stores or selling locations. Similarly, in col. 42, information available from Point of Sales systems about "retailing outlets" is mentioned, but the detailed data formats in which Huang teaches his approach (see, e.g., Appendix A, cols. 112-131, especially POS data table cols. 122, line 58 - 123, line 17) make it clear that the data received by the manufacturer is not granular enough to read on these claims. Taken as a whole, Huang addresses manufacturer deliveries to distribution centers and teaches away from using store-level data. This can be seen in more than 80 references to the customer "DC" throughout Huang's disclosure. Therefore, these claims should be allowable over the art of record.

Bottom-up planning means something different to a manufacturer and to Huang in particular than it means to a retailing manager. This is why Huang teaches away from using store-level data. Huang's bottom-up planning does not reach into selling locations as claimed in the antecedent basis to this dependent claim. Therefore, these claims should be allowable over the art of record.

Open to buy management reports for retailers involve total inventory budgets across competing vendors and manufacturers. This is not data that one of ordinary skill would expect to interest Huang to access. Mentioning "budget concerns" (OA at 6) for sale of products from one particular manufacturer does not read on open to buy management reports, which span competing vendors and manufacturers. Retailers cannot be expected to give detailed budget and inventory information for manufacturer B's products to manufacturer A, which would be necessary to have manufacturer A

generate an open to buy management report. Therefore, these claims should be allowable over the art of record.

The Examiner admits that neither reference addresses markdown management timing or levels. OA at 7 ("Huang et al. does not expressly disclose that the markdown management recommends timing and level of markdowns. Landvater does not expressly disclose recommending timing and level of markdowns.") The Examiner attempts to substitute official notice for a teaching to use simulation at a store level to generate markdown timing and level recommendations. To say that everyone wants to make money (paraphrasing the Examiner, OA at 5 & 7) does not make any technological element subject to official notice. We do not recall any reference that the Examiner has cited in six related cases over several years of prosecution that allowed a system to recommend pricing. Of course, the Examiner's burden includes presenting an enabling disclosure that reads on markdown management as claimed. *In re Payne*, 606 F.2d 303, 314-15, 203 USPQ 245 (CCPA 1979) *citing*, *In re Brown*, 329 F.2d 1006, 141 USPQ 245 (CCPA 1964) (rejection reversed); *see*, *In re Sheppard*, 339 F.2d 238, 52 C.C.P.A. 859, 1964 CCPA LEXIS 263, 1965 Dec. Comm'r Pat. 107, 144 U.S.P.Q. (BNA) 42 (C.C.P.A. 1964) (rejection reversed); *In re LeGrice*, 301 F.2d 929, 49 C.C.P.A. 1124, 1962 CCPA LEXIS 278, 1962 Dec. Comm'r Pat. 707, 133 U.S.P.Q. (BNA) 365 (C.C.P.A. 1962) (rejection reversed); 1-3 Chisum on Patents § 3.04 [1][b][v] to [1][c]. Pursuant to MPEP § 2144.03, Examiner must now provide either a declaration or documentary evidence to support the rejection, instead of purported official notice. On the present record, these claims should be allowable over Huang in view of Landvater.

In summary, one of ordinary skill in the art, beginning with Huang, would not look to Landvater to find a way to generate reports for retailers as claimed in the allocating, distributing, bottom-up planning for selling locations, open to buy management and markdown management elements. As discussed above, Huang has no interest in planning at the store or department-within-store level and no access to such granular data. Huang is clear: the manufacturer assumes no control over or responsibility for distribution of goods after delivery to the customer's distribution center. The data needed for at least some of these reports is retailer-confidential and not available to the manufacturer. If even one of these several reports is not taught, as the Examiner

claims, by Huang's description of a manufacturer's production planning system, then the rejection under section 103 should be withdrawn. As Huang does not read on at least five of the reports claimed and the Examiner relies only on Huang for these reports, claims 98-99 should be allowed over the art of record.

Claim 20

Claim 20 includes the limitation:

wherein the analytical reports include open to buy reports

This limitation is not found in Huang in view of Landvater for the reasons described above, in the context of claims 98-99. Open to buy management reports for retailers involve total inventory budgets across competing vendors and manufacturers. This is not data that one of ordinary skill would expect to interest Huang to access. Mentioning "budget concerns" (OA at 6) for sale of products from one particular manufacturer does not read on open to buy management reports, which span competing vendors and manufacturers. Retailers cannot be expected to give detailed budget and inventory information for manufacturer B's products to manufacturer A, which would be necessary to have manufacturer A generate an open to buy management report.

Therefore, claim 20 should be allowable over Huang in view of Landvater.

Claim 58

Claim 58 includes the limitation:

wherein the analytical reports include bottom-up planning reports

This limitation is not found in Huang in view of Landvater for the reasons described above, in the context of claims 98-99. Bottom-up planning means something different to a manufacturer and to Huang in particular, than it means to a retailing manager. This is why Huang teaches away from using store level data. Huang's bottom-up planning does not reach into selling locations as claimed in the antecedent basis to this dependent claim.

Therefore, claim 58 should be allowable over Huang in view of Landvater.

Claims 2-5, 12-15, 21-24, 31-34, 40-43, 59-62, and 69-72

Claims 2-5, 12-15, 21-24, 31-34, 40-43, 59-62 and 69-72 include the limitations:

wherein a pair of the good identifier and event identifier attributes associate a single good at a single selling location with one of the plurality of events

... a single good at a group of selling locations ...

... a group of goods at a single selling location ...

... a group of goods at a group of selling locations ...

These limitations are not found in Huang in view of Landvater. The limitations restrict the structure of the causal calendar.

The Examiner acknowledges (OA at 8) that "Huang et al. does not disclose the specific details of the association between a product or products and a location or locations, as per claims 2-5." That leaves the Examiner relying on one of ordinary skill, beginning with Huang, to find reason to extract these features from Landvater, if present, and introduce them into Huang, without using these claims as a blueprint or roadmap.

The Examiner states that the reason to extend Huang's system with these features is "to more efficiently keep track of the unique and specific needs of specific locations." OA at 9. Huang specifically teaches away from concern about specific selling locations or stores, because that is not a manufacturer's concern. Overloading Huang with the burden of having a manufacturer keep track of unique and specific needs of retail selling locations would grind the system to a halt. The proposed reason for combination is contradicted by the primary reference, impractical and inefficient. One of ordinary skill would not behave as the Examiner suggests.

Huang's calendar of promotions associates an event with a single good at a group of selling locations.

Therefore, claims 2-5, 12-15, 21-24, 31-34, 40-43, 59-62 and 69-72 should be allowable over Huang in view of Landvater.

Claims 6, 25, 44 and 63

Claims 6, 25, 44 and 63 should be allowable over Huang in view of Landvater for at least the same reasons as the claims from which they depend.

Claims 7-8, 26-27, 45-46 and 64-65

Claims 7-8, 26-27, 45-46 and 64-65 should be allowable over Huang in view of Landvater for at least the same reasons as the claims from which they depend.

Claims 9, 28, 47 and 66

Claims 9, 28, 47 and 66 include the limitation:

wherein the set of analysis programs is adapted to fashion retail goods.

This limitation is not found in Huang in view of Landvater. Post order allocation, distribution and open to buy analyses are particularly important to fashion goods.

The Examiner mistakenly equates fashion goods and seasonal goods, which is contrary to the teachings of this application. The Examiner says that it is old and well known that fashion goods are seasonal, such as spring fashions (OA at 11), but is mistaken in equating seasonal (e.g., thermal underwear) with fashion goods. We specifically challenge the assertion of what is old and well known, to the extent that it might seem to support the Examiner's surmise.

The difference between fashion and seasonal goods is clearly articulated in the application at 10:

Fashion/Seasonal goods. These goods are usually differentiated from basic goods in that they have limited or no ability to really be reordered once sales performance has been measured. The mathematical calculations to determine how much to order, allocate or distribute can differ by using historical sales profiles rather than specific good history.

Fashion goods. These goods can be further differentiated to goods that have no exact good history and therefore the mathematical calculations are based on historical profiles, in-season selling performance or a combination of the two.

Seasonal goods. These goods can also be further differentiated from fashion goods as having same good or very comparable good sales histories that however are discontinuous because the good is not sold year round. Therefore, the math may use that past good history and some combination of historical profiles and in-season selling performance.

This is consistent with how those of ordinary skill in retail management would differentiate between fashion and seasonal goods.

The Examiner acknowledges (OA at 10) that "Huang et al. does not expressly disclose fashion retail goods."

The passages of Landvater do not address fashion goods, as that term is used in this application. The passage in col. 10 uses "hot sauce" as an example, which is not a fashion good. Christmas lights, in col. 12, are seasonal but not fashion goods. Six packs of soda or beer in col. 15 are neither seasonal nor fashion goods (although beer admittedly tastes better on a hot summer afternoon.) The phrase "fashion items" is used in col. 19, but in the context of set-up time, which does not read on the words of

this claim. Therefore, however Huang and Landvater might be combined, Landvater does not supply the claimed element that is lacking from Huang.

Combining Huang with Landvater to address fashion goods is not something that one of ordinary skill in the art would do. One of ordinary skill would not begin with Huang. Nothing in Huang is adapted to the manufacturing of fashion goods, such as spring fashions. Huang's premises do not work with fashion goods. There is little or no opportunity for reorders or to produce more fashion goods based on early season sales. There is no replenishment cycle. The goods change from one season to the next and do not repeat from year to year. One of ordinary skill would not begin with Huang as a basis for addressing fashion goods. A misguided soul who tried using Huang to plan manufacturing of fashion goods would not turn to Landvater, because Huang teaches delivering goods to the customer's DC and letting the customer allocate and distribute the goods, as explained above.

Therefore, claims 9, 28, 47 and 66 should be allowable over Huang in view of Landvater.

Claims 10-11, 29-30, 48-49 and 67-68

Claims 10-11, 29-30, 48-49 and 67-68 should be allowable over Huang in view of Landvater because Huang, on which the Examiner relies, does not extend to the per-item, per selling-location level and for the other reasons applicable to the claims from which these depend.

Claim 39

Claim 39 includes the limitation:

wherein the analytical reports include markdown management reports

This limitation is not found in Huang in view of Landvater. For markdown management reports, the Examiner relies only on Huang.

The Examiner relies primarily on col. 54, lines 49-67, as the cited passage from col. 11 does not mention promotions or markdowns. The "Future Promotion Impact Estimation" is not the same as markdown management. This application explains, at 9:

Markdown management: A markdown management system or markdown activity within a system typically determines the optimal timing and level of markdowns of a seasonal or fashion program in order to sell the total purchased quantity by a predetermined "out date" while maximizing revenue. In order for a markdown management system to perform, it needs to query

the causal event calendar in order to determine what event occur between the date of the markdown analysis and the “out date” in order to calculate the expected selling. For example, an good that has no event planned before its “out date” might require a markdown in order to reach full sell-through based on the rate of selling to-date; however, that same good with the same selling to-date may not require a markdown if some other event – a visual promotion, perhaps – is planned to take effect between the date of analysis and the “out date.” Because the future likely rate of selling is critical to calculating what markdowns and markdown levels will be required, the Markdown system or Markdown activity should find it is helpful to get the causal event information from the causal event calendar in order to make the most accurate determination of what markdowns are best.

Huang’s promotion impact estimation, from a manufacturer’s perspective looking at DC’s and not selling locations, does not remotely read on markdown management reports.

Therefore, claim 39 and the claims that depend from it should be allowable over Huang in view of Landvater.

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims as now stated.

Applicants would welcome an interview, if the Examiner is so inclined. The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Fee Authorization. The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0869 (BLFR 1003-1).

Respectfully submitted,

Dated: August 7, 2007

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